

#### § 10.34

proceeding any time after the institution of a proceeding and before such proceeding has been submitted for final consideration. Petitions for leave to intervene shall be in writing and shall set forth with specificity the nature of the petitioner's interest in the proceeding and the manner in which his interests may be affected substantially. The Administrative Law Judge may direct a petitioner requesting intervention to submit himself for examination as to his interest in the proceeding.

(b) *Response to petition.* A petition for leave to intervene shall be served by the petitioner upon all parties to the proceeding, who may support or oppose the petition in a document filed within ten days after service of the petition upon them or within such other period as the Administrative Law Judge may direct in a particular case.

(c) *Leave to intervene—when granted.* No person shall be admitted as a party to a proceeding by intervention unless the Administrative Law Judge is satisfied that (1) a substantial interest of the person seeking to intervene may be adversely affected by the matter to be considered in the proceeding; (2) that his intervention will not materially prejudice the rights of any party, through delay or otherwise; (3) that his participation as a party will otherwise be consistent with the public interest; and (4) that leave to be heard pursuant to § 10.34 would be inadequate for the protection of his interests. The burden shall be upon the petitioner to satisfy the Administrative Law Judge on these issues.

(d) *Rights of intervenor.* A person who has been granted leave to intervene shall from that time forward have all the rights and responsibilities of a party to the proceeding.

#### § 10.34 Limited participation.

(a) *Petitions for leave to be heard.* Any person may, in the discretion of the Administrative Law Judge, be given leave to be heard in any proceeding as to any matter affecting his interests. Petitions for leave to be heard shall be in writing, shall set forth (1) the nature and extent of the applicant's interest in the proceeding; (2) the issues on which he wishes to participate; and (3)

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in what manner he wishes to participate. The Administrative Law Judge may direct any person requesting leave to be heard to submit himself to examination as to his interest in the proceeding.

(b) *Rights of a participant.* Leave to be heard pursuant to § 10.34(a) may include such rights of a party as the Administrative Law Judge may deem appropriate, except that oral argument before the Commission may be permitted only by the Commission.

#### § 10.35 Permission to state views.

Any person may, in the discretion of the Administrative Law Judge be permitted to file a memorandum or make an oral statement of his views, and the Administrative Law Judge may, in his discretion, accept for the record written communications received from any person.

#### § 10.36 Commission review of rulings.

Interlocutory review by the Commission of a ruling as to matters within the scope of § 10.33, § 10.34 or § 10.35 may be sought in accordance with the procedures set forth in § 10.101 of these rules without certification by the Administrative Law Judge.

### Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery; Depositions

#### § 10.41 Prehearing conferences; procedural matters.

In any proceeding the Administrative Law Judge may direct that one or more conferences be held for the purpose of:

- (a) Clarifying issues;
- (b) Examining the possibility of obtaining stipulations, admissions of fact and of authenticity or contents of documents;
- (c) Determining matters of which official notice may be taken;
- (d) Discussing amendments to pleadings;
- (e) Limiting the number of witnesses;
- (f) Considering objections to the introduction of documentary evidence and the testimony of witnesses identified in prehearing materials filed or

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otherwise furnished by the parties pursuant to § 10.42;

(g) Discussing adoption of shortened procedures pursuant to § 10.92;

(h) Promoting a fair and expeditious hearing.

At or following the conclusion of a prehearing conference, the Administrative Law Judge shall serve a prehearing memorandum containing agreements reached and any procedural determinations made by him, unless the conference shall have been recorded and transcribed in written form and a copy of the transcript has been made available to each party.

[41 FR 2511, Jan. 16, 1976, as amended at 63 FR 55791, Oct. 19, 1998]

### § 10.42 Discovery.

(a) *Prehearing materials*—(1) *In general.* Unless otherwise ordered by an Administrative Law Judge, the parties to a proceeding shall furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge in the form of a prehearing memorandum or otherwise:

(i) An outline of its case or defense;

(ii) The legal theories upon which it will rely;

(iii) The identity, and the city and state of residence, of each witness, other than an expert witness, who is expected to testify on its behalf, along with a brief summary of the matters to be covered by the witness's expected testimony;

(iv) A list of documents which it intends to introduce at the hearing, along with copies of any such documents which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(2) *Expert witnesses.* Unless otherwise ordered by the Administrative Law Judge, in addition to the information described in paragraph (a)(1) of this section, any party who intends to call an expert witness shall also furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge:

(i) A statement identifying the witness and setting forth his or her qualifications;

(ii) A list of any publications authored by the witness within the preceding ten years;

(iii) A list of all cases in which the witness has testified as an expert, at trial or in deposition, within the preceding four years;

(iv) A complete statement of all opinions to be expressed by the witness and the basis or reasons for those opinions; and

(v) A list of any documents, data or other written information which were considered by the witness in forming his or her opinions, along with copies of any such documents, data or information which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(3) The foregoing procedures shall not be deemed applicable to rebuttal evidence submitted by any party at the hearing.

(4) In any action where a party fails to comply with the requirements of this paragraph (a), the Administrative Law Judge may make such orders in regard to the failure as are just, taking into account all of the relevant facts and circumstances of the failure to comply.

(b) *Investigatory materials*—(1) *In general.* Unless otherwise ordered by the Commission or the Administrative Law Judge, the Division of Enforcement shall make available for inspection and copying by the respondents, prior to the scheduled hearing date, any of the following documents that were obtained by the Division prior to the institution of proceedings in connection with the investigation that led to the complaint and notice of hearing:

(i) All documents that were produced pursuant to subpoenas issued by the Division or otherwise obtained from persons not employed by the Commission, together with each subpoena or written request, or relevant portion thereof, that resulted in the furnishing of such documents to the Division; and

(ii) All transcripts of investigative testimony and all exhibits to those transcripts.

(2) *Documents that may be withheld.* The Division of Enforcement may withhold any document that would disclose: